

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SunGard Higher Education Inc.,:

Plaintiff, :

v. :

JUDGE JAMES L. GRAHAM

Cajana, Inc., :

Magistrate Judge Kemp

Defendant. :

MEMORANDUM OF
FIRST PRETRIAL CONFERENCE

This matter came before the Court on May 3, 2011 at 4:00 p.m. at the First Pretrial Conference pursuant to notice and in accordance with Rule 16 of the Federal Rules of Civil Procedure. Counsel appeared as follows:

For the Plaintiff:

Joseph Richard Dreitler
Mary R. True

For the Defendant:

Kimberly W. Herlihy
John M. Kuhl

The following matters were considered:

A. VENUE AND JURISDICTION

There are no issues concerning venue or jurisdiction.

B. PARTIES AND PLEADINGS

Any motion to amend the pleadings or to join parties shall be filed by October 1, 2011.

C. MOTIONS

There are no pending motions.

D. ISSUES

This is a copyright infringement case. Plaintiff claims that defendant has accessed its copyrighted software without permission and has been improperly soliciting and serving clients who previously purchased plaintiff's products. The complaint also pleads claims under state law.

Defendant has answered, denying liability and raising various defenses.

There is a jury demand.

E. DISCOVERY PROCEDURES

All discovery shall be completed by May 15, 2012. For purposes of complying with this order, all parties shall schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and shall file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so.

Any motions for summary judgment shall be filed by July 15, 2012.

F. EXPERT TESTIMONY

If plaintiff seeks to establish a matter affirmatively through the use of expert testimony, it shall identify such expert by February 1, 2012. The manner of identification shall be by way of the disclosures required by Fed. R. Civ. P. 26(a)(2), which reads in full:

"Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is

retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years."

If defendant intends to use expert testimony directed to that subject matter, it shall identify, in the same manner, such expert by April 1, 2012. Pursuant to Fed. R. Civ. P. 26(b)(4)(A), leave of court is not required in order to depose a testifying expert.

G. SETTLEMENT

The parties are encouraged to make a good faith effort to settle this case. This case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference during this Court's December, 2011 settlement week. In order for the conference to be meaningful, all discovery that may affect the parties' ability to evaluate this case for settlement purposes must be completed prior to the beginning of settlement week. The parties will also be expected to comply fully with the settlement week orders which require, inter alia, that settlement demands and offers be exchanged

prior to the conference and that principals of the parties attend the conference.

H. OTHER MATTERS

The Clerk shall set this case for a status conference on or after July 5, 2011. At the conference, the parties will be prepared to discuss whether an early mediation might be productive.

If the foregoing does not accurately record the matters considered and the agreements reached at the conference, counsel will please immediately make their objection in writing. If any date set in this order falls on a Saturday, Sunday or legal holiday, the date is automatically deemed to be the next regular business day.

/s/ Terence P. Kemp
United States Magistrate Judge